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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

BETTY G. TRACY, PETITIONER

V.

BAPTIST HEALTHCARE SYSTEM, INC.,
doing business as WESTERN BAPTIST HOSPITAL, INC.,

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit and
The United States District Court,
Western District Of Kentucky, Paducah Division

PETITIONER'S REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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ARGUMENT

I. THE DECISION OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, PADUCAH DIVISION, IS IN CONFLICT WITH A DECISION OF THE SUPREME COURT OF THE UNITED STATES. THE IMPROPER DECISION WAS UPHELD BY THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

In Memorandum Opinion of the District Court, all reasonable inferences were found to be in favor of the Petitioner, yet ruling was in favor of the Respondent.

This decision is in conflict with a decision of the United States Supreme Court, having ruled in the case of Reeves v. Sanderson Plumbing Products, Inc. (U.S., No. 99-356, 06/12/00:) in that:

> "...in deciding Rule 50 motion for judgment as matter of law, court should, as in deciding motion for summary judgment, review all evidence in record, draw all reasonable inferences in favor of the nonmoving party, and disregard all evidence favorable to the nonmoving party that a jury is not required to believe."

The District Court as well as The United States Court of Appeals each erred in ruling that there is no genuine issue as to any material fact; that Tracy failed to demonstrate Rathbun's actions as severe or pervasive in creation of the objectively hostile work environment; and, that Tracy did not suffer any adverse actions by the employer. Furthermore, the District Court erred in this matter in ruling that Rathbun's actions were not frequent or so severe as to unreasonably interfere with the Plaintiff's job performance.

In fact, the actions of Rathbun did unreasonably interfere with the Petitioner's work performance in that:

A. On numerous occasions of Rathbun's harassment, Tracy had to leave the work area in order to bring to a stop the sexually overt, hostile and intimidating conduct that she endured from Rathbun, thereby not only slowing Tracy in her productivity, but also creating a working environment of fear, upset and dread of Rathbun's continual offensiveness.

B. On numerous occasions Rathbun called for the attention of Tracy and numerous coworkers in order to have them witness his mashing his acne sores then wiping the acne contents on a specific coworker.

C. Rathbun instigated a workplace altercation which required intervention of numerous staff members, including Tracy, as well as security personnel. This altercation and the employer's investigation caused more than two weeks of department wide discord and lowered productivity. Additionally, just as with the numerous complaints to management by various sources of Rathbun's other offensive actions, the Respondent did not issue any warnings or reprimandations to Rathbun, and he was thereby allowed to bring further discord into the workplace (concerning that he assaulted the husband of his girlfriend, who also happened to be his immediate supervisor) and resulted in numerous staff members, including Tracy, being subpoenaed to an emergency legal proceeding.

D. Tracy's physician's ordered her off from work on numerous occasions as a direct result of the work place environment, and one of these occasions

Tracy's physician ordered her to be hospitalized in the emotional wellness unit of another hospital.

This matter, with it's documented details, does indeed present that there is absolute genuine issue of numerous material facts. The Respondent's management documented in Tracy's employment record, on a consistent basis, their intent and methods of retaliating against her, based upon her complaints of sexual harassment. To prove the existence of genuine issue as to material fact, Tracy seeks to present:

A. The employment file that Baptist Healthcare System, Inc., d/b/a Western Baptist Hospital kept on Tracy, since this file is in excess of eight hundred pages for Tracy's three year tenure of employment at Western Baptist Hospital. The Respondent's management even included their intentions to retaliate against Tracy on a consistent basis.

B. Documentation in which:

1. The Respondent's management claims to have "...advised (Tracy) not to honor the subpoena." in which her testimony would have been unfavorable to Rathbun.

2. The Respondent acknowledged two prior complaints had been made by Tracy concerning the sexually offensive and intimidating actions of Rathbun. Respondent also admits, in the same documentation, that they did not even attempt to issue any form of prompt corrective action toward Rathbun concerning either of Tracy's prior complaints.

3. After Tracy reported that she had endured one of the incidents of workplace sexual harassment, the Respondent's management advised her that "That happened three days ago.", and "I don't think that I can do anything about it." The documentation of this matter further proves that the Respondent's management counseled Tracy for this complaint by using a "scenario", in that "...if you have a puppy and it pees in the floor, you don't wait three days to rub it's nose in it."

Tracy seeks jury trial in this matter in order to have the terms of "pervasive" and "severe" properly defined.

Tracy seeks witness testimony in this matter since other's also complained to Baptist Healthcare's management of being sexually harassed by Rathbun. Furthermore, the Respondent's management approached numerous coworkers of Tracy and expressed intent to retaliate against Tracy for complaining of sexual harassment.

II. THE RESPONDENT HAS CONSISTENTLY FAILED TO ADDRESS NUMEROUS SIGNIFICANT FACTS OF THIS MATTER AS CONTAINED WITHIN THE PETITIONER'S COMPLAINT.

The Respondent has never addressed numerous significant issues of this matter, including that Rathbun made threatening remarks to Tracy. During one of these occasions Rathbun threatened Tracy not to make him or his family mad, (complaint, p.3. e.). This threat was issued by Rathbun after he boasted that his "uncle" Charles Rathbun, a California photographer, was the subject of national media attention for having murdered a model by the name of Linda Sobek. (Appellant's Brief, p.6; Pet. for Writ of

Cert., p. 6). This threat, as well as numerous others, were witnessed by numerous others also employed within the area, and Respondent's management had received several complaints, yet failed to take any form of corrective action.

The Respondent has failed to address that it's management told Tracy in regards to her complaints of Rathbun's actions that "It was all in your head." (Complaint, p. 4, h.). Furthermore, the Respondent has also failed to address that Tracy was told that she could avoid being given a reprimand only if she gave the department management a copy of a tape she that had made of this conversation. (Complaint, p. 4, l.)

Throughout this matter the Respondent has failed to address that they required the Petitioner to use personal time to access their requirement that Tracy access the Employment Assistant Program. (Complaint, p. 5, n.)

Furthermore, the Respondent has never address that their management advised Tracy not to honor a subpoena she received in a legal proceeding in which her testimony would have been damaging to Rathbun.

III. BAPTIST HEALTHCARE SYSTEM, INC., d/b/a WESTERN BAPTIST HOSPITAL RESPONDS TO NUMEROUS FACTS OF THIS MATTER BY ERRONEOUSLY DEFENDING IT'S ACTIONS.

Respondent states in it's Brief for Opposition that after receiving complaints on April 23, 1996, of Rathbun's sexually offensive actions that it's management spoke with Rathbun's immediate management and warned that if there were any further incidents that Rathbun would be banned from the premises. (Brief in Opposition, p. 6). The Petitioner hereby points to the following:

1. For the Respondent's management to contact the supervisor of the harasser does not constitute any form of reprimandation as is the policy of the Petitioner.

2. Respondent's claim of having spoken with Rathbun's supervisor concerning the complaints of his actions cannot be taken in good faith since the Respondent did not issue any proper documentation of this erroneous corrective action.

3. Respondent's claim of threatening to ban Rathbun from the premises is erroneous, since Rathbun did return to the premises on numerous occasions.

Respondent, contrary to fact, claims that Tracy told co-workers that she was going to "make the hospital pay", and disrupting co-workers and supervisors. (Brief in Opposition, p. 7). Petitioner never said that she was going to make the hospital pay, but in fact, on a repeated basis asked that the hospital: A) take appropriate action to stop the sexually offensive actions, and B) stop retaliating against her for having complained of Rathbun's actions. The Respondent is unable to provide any of co-workers as witnesses to say that they reported Tracy to management in Respondent's erroneous claim that Tracy was being disruptive to her co-worker's for discussing Rathbun and that she was going to "make the hospital pay". Respondent's denial of calling Tracy a "troublemaker" is erroneous. That the Respondent's admission of this having called Tracy into the office constitutes discrimination, in that the Respondent does admit that their management called Tracy into the office and instructed her to stop discussing the actions Rathbun, yet Rathbun was allowed to continue with the sexually harassing conduct. Furthermore, Tracy had not discussed Rathbun's actions with her co-workers, but instead, only moments before

had made a further complaint to another member of management of Rathbun breathing on her. Immediately after making this further complaint, Tracy was indeed called into the department supervisor's office and told "We want you to just shut up about Don and quit causing trouble. We don't need a troublemaker in this office."

Tracy was denied a pay increase and placed on a ninety-day probation. The Respondent's management informed Tracy that this decision was based upon "personal problems". Petitioner merely claims that Tracy had not been exposed to all facets of her job position, "due to her numerous absences during the initial ninety-day period." Tracy respectfully directs to this pretextual reasoning of the Respondent by offering the following:

1) Petitioner requested that she be granted training in the area of combining duplicate medical records. For more than one year, Tracy requested of the department management that she receive training in this area, which is crucial to patient care. The Petitioner, more than one and one half years after being assigned this responsibility, was only granted the training that she requested after having made this request to the hospital's personnel department. (Resp. to Mot. for Sum. Judg., attach. k., 06/18/97).

2) The Respondent has failed to acknowledge that the Petitioner's absences were:

(A) Tracy was removed from work by her physician for a one week period, not only for having endured Rathbun's actions, but also as a direct result of the treatment that she received from the hospital in their repeated resistance against Tracy for having complained.

(B) Tracy was required to by the Respondent to

attend the Employment Assistance Program, and included within this requirement of the Respondent, Tracy was also required to use her vacation time to do so.

IV. CONCLUSION

The Respondent's explanations of the facts of this matter are only mere pretextual explanations, as well as mere denials, and thereby received improper judgment by the District Court as well as at the Sixth Circuit. Your Petitioner, Betty G. Tracy, hereby respectfully prays that this matter be remanded back to the District Court level with jury trial and witness testimony in order to have a proper decision granted.

Respectfully Submitted,

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